

REMARKS

Claims 1-32 are pending in the instant application. In a Final Office Action dated October 17, 2008, the Examiner has rejected all of the pending claims as described below.

In addition to the remarks below, Applicant has filed a Request for Continued Examination (RCE) in conjunction with this paper.

Claim Rejections Under 35 U.S.C. § 102

In the October 17, 2008 Final Office Action, the Examiner rejected claims 1-32 as being assertedly anticipated by Osman, United States Patent Publication No. 2004/0024894. Applicant respectfully submits that this rejection was improper for at least the reasons below, and Applicant therefore requests that the rejection be withdrawn and claims 1-32 be allowed. -

Applicant first notes that the cited Osman reference is related to the instant application and shares a common assignee and common inventors. In particular, the two inventors of Osman (Osman and Knee) are also co-inventors on the instant application, which includes one additional inventor (Petry). Moreover, the priority date of Osman is August 2, 2002, which predates the priority date of the instant application (October 17, 2002) by less than 3 months.

Accordingly, in a previous reply to a Non-Final Office Action filed on July 7, 2008, Applicant provided Rule 131 declarations for each Applicant, along with supporting documentation in the form of multiple exhibits, evidencing Applicants' prior invention of the claims of the instant application, along with diligence, prior to the filing date of Osman.

Included in the supporting documentation in the previously filed response were a number of exhibits electronically filed by Applicant. However, due to an error at the USPTO, a number of these exhibits were received by the USPTO's electronic filing system but were not entered into PAIR at the time of filing. Consequently, through no fault of the Applicant, the Examiner did not receive or evaluate any of these exhibits before making the final rejection in this application.

More specifically, Exhibits D, E, F and G, which were electronically filed on July 7, 2008, were not entered into the PAIR system until approximately April 9, 2009, well after entry of the Final Office Action, despite the fact that they should have been considered by the Examiner before making the final rejection.

Applicant first became aware of this issue in February, 2009, and has diligently tried to resolve this issue and have the Examiner withdraw the final office action and consider the additional exhibits. Specifically, Applicant's attorney has contacted the Examiner, as well as the Examiner's Supervisor, Ario Etienne, multiple times to try to resolve this issue before the six month response deadline. However, the Examiner has failed to withdraw the final rejection as of the time of filing of this paper. Accordingly, Applicant has filed an RCE in this application to avoid abandonment.

Applicant respectfully requests that, in view of the full set of exhibits (Exhibits A-H) filed in response to the previous Non-Final Office Action in this application, the Examiner withdraw the rejections of claim 1-32 and put the application in condition for allowance.

In addition, Applicant respectfully requests that, in view of the USPTO's mistake in failing to enter the exhibits electronically filed by Applicant into the PAIR system and failing to withdraw the Final Office Action despite having knowledge of this mistake, that the USPTO refund the fees associated with the filing of the RCE in this application.

Concluding Comments

Applicant respectfully requests consideration of the remarks herein prior to further examination of the above-identified application. The undersigned would of course be available to discuss the present application with the Examiner if, in the opinion of the Examiner, such a discussion could lead to resolution of any outstanding issues.

The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 50-1283.

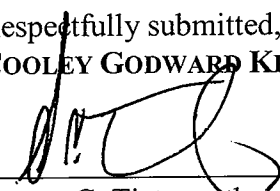
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